

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
A National Broadband Plan for Our Future)	GN Docket No. 09-51
)	
Establishing Just and Reasonable Rates for Local Exchange Carriers)	WC Docket No. 07-135
)	
High-Cost Universal Service Support)	WC Docket No. 05-337
)	
Developing an Unified Intercarrier Compensation Regime)	CC Docket No. 01-92
)	

COMMENTS

of the

**KANSAS RURAL INDEPENDENT TELEPHONE COMPANIES;
STATE INDEPENDENT TELEPHONE ASSOCIATION; and
RURAL TELECOMMUNICATIONS MANAGEMENT COUNCIL**

I. INTRODUCTION

The organizations listed above are Kansas associations comprised of independent rural telephone companies providing local exchange and exchange access service, pursuant to state certification, to defined service areas in the state of Kansas. Each such company is a “rural telephone company” as defined in 47 C.F.R. §51.5 and as defined by Kansas statute (K.S.A. 66-1,187). Each such company operates statutorily under traditional rate of return regulation (K.S.A. 66-2005) and serves as the incumbent

carrier in its defined service area as Carrier of Last Resort pursuant to statute (K.S.A. 66-2009).

In addition to providing local exchange and exchange access service, each of these Commenters' constituent companies provides advanced telecommunications services to its customers pursuant to the terms of state statute (K.S.A. 66-2001(c) and (d), K.S.A. 66-2005) and consistent with the provisions of 47 U.S.C. §254(b). These companies have incurred substantial long-term debt and have made extensive investments to make possible these mandated advanced services in reliance on statutory determination of public policy, and specifically in reliance on the assurance of sufficient and predictable external support mechanisms to meet their long-term obligations.

These commenters, as participants in the rural communities and economies they serve, support the objective of available broadband service at affordable rates throughout rural America. The following comments are submitted in opposition to the Commission's Notice of Proposed Rulemaking (NPRM) in the above referenced dockets because the drastic revision of regulatory policy proposed by the Commission would degrade existing broadband service, waste substantial public resources and prudent private investment made in furtherance of public utility service, cause numerous defaults on substantial obligations owed to the federal government and others, and substitute a failed support methodology for one that has proven to be transparent, responsible and successful.

II. BACKGROUND

These commenters' constituent rural telephone companies exist because larger carriers saw no opportunity for sufficient profit in sparsely populated rural areas. The provision of basic communications service available to virtually all Americans has been achieved only through reliance on revenues from outside these high-cost areas, where affordable charges to consumers provide insufficient rate revenue to meet necessary costs of service.

Operating under rate of return regulation the Kansas rural independent carriers have deployed extensive facilities necessary to provide, throughout their service areas, reliable and affordable communications services available to all consumers. The carriers' actual costs and investments have been subjected to thorough and scrupulous review by experienced state and federal regulators, to the end that the carriers receive only those revenues sufficient to recover reasonable investments and costs, with a modest and regulatorily approved margin for return on investment. Ratepayers and contributors to support mechanisms have the protection of public agencies' assurance that payments are neither excessive nor inadequate to achieve the defined public purpose.

In recent years these rural carriers' networks have undergone additional investment and modernization, both to assure continuing efficient and reliable basic service and to meet the statutory objectives of assuring "access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those

services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.” (47 U.S.C. §254) In contrast, demographically comparable areas of Kansas served by local exchange carriers operating under incentive regulation have experienced far less investment, to the end that advanced services remain generally unavailable outside of significant population centers within such areas. External support to these carriers, and to other providers of basic communications services, continues to be based on economic assumptions rather than on substantive demonstration of any need for public/ratepayer contribution.

III. INSUFFICIENCY OF PROPOSED SUPPORT UNDER THE NPRM

The proposals set forth in the NPRM have been evaluated on a company-specific basis with respect to the actual circumstances of most, if not all, of the companies submitting these comments. The effect of adoption of the NPRM would be, in a significant majority of these companies, outright business failure. In most cases, the companies would experience net annual losses beginning within two to three years and continuing indefinitely thereafter. This outcome would necessitate not mere reductions in existing service quality, but complete discontinuance of service – both advanced and basic. The universal service penetration levels achieved through decades of prior policy would be reversed, with such reversal attributable specifically and solely to adoption of the rules now under consideration.

Efforts to expand broadband availability through the provisions of the NPRM would create new areas of unavailability. The provisions of the NPRM are insufficient

to permit continued satisfaction of providers' long-term debt commitments, and therefore insufficient to support continuation of advanced services. Many of these commitments were made in justifiable reliance, by both the carriers and by other federal agencies, on the continuing availability of sufficient and predictable support under existing statute and regulatory policy. Given the inherent inability of many rural service areas to sustain advanced services through rates alone, mere assumption of service by another provider would not be feasible without access to comparable levels of external support.

It is unrealistic and unreasonable to assume existing broadband providers could or would find ways to "self-subsidize" uneconomic services. Both new and existing high-quality broadband services, like any other business activity, depend on the continuing reasonable opportunity to recover at least a modest return on owners' or members' investment. Responsible broadband deployment requires a long-term commitment, and no responsible carrier will make a commitment to long-term losses.

III. ADVERSE PUBLIC CONSEQUENCES

Business failures caused by the adoption of the proposed rules would have negative consequences well beyond the failed companies themselves. Fragile rural economies would stand to lose not only the opportunity to recruit and expand businesses but also to retain existing businesses that rely on broadband services. The loss of employment opportunities would aggravate already declining rural populations. As a result, provision of substitute broadband services to remaining residents and

businesses would carry a higher per-consumer cost. Broadband service rates charged to consumers would necessarily increase, negatively affecting adoption rates.

Existing broadband service presently supports the growing provision of educational, medical and commercial services otherwise unavailable in rural markets. Discontinuance of existing broadband services due to new regulatory policies would deny existing and expanding availability of these services in these markets further impacting business and population retention.

The adverse consequences of NPRM adoption would extend well beyond the specific markets where carriers would soon fail. Carrier failure would create an unprecedented level of default on long-term debt, including significant default on obligations owed to the Rural Utilities Service (RUS). Repayment of billions in taxpayer-funded loans would be terminated, with the agency left holding extensive network assets inherently uneconomic and unattractive to third parties. It is unrealistic to expect any substitute provider to acquire the abandoned facilities and assume service obligations without an infusion of public/ratepayer support at least comparable to that denied to the original debtor. Meanwhile the revolving nature of RUS lending would be disrupted, denying capital support for new broadband investment in unserved or underserved markets.

Additional public resources would be compromised by carrier failures under the NPRM. The public effort embodied in the American Recovery and Reinvestment Act of 2009 included billions of public dollars committed to broadband deployment through the Department of Agriculture's Broadband Initiatives Program (BIP). If the broadband

services intended to be provided through BIP grants fail due to insufficient continuing support to service provider grantees, those grants in large measure will literally become federal resources poured into a hole in the ground.

These commenters are not alone in recognizing and expressing serious concern for the consequences of proposed broadband policy. Attached hereto as Appendix A is a Resolution adopted unanimously by the Kansas Senate specifying areas of public policy concern and calling for revision of such proposals.

IV. THE MYTH OF NEW BROADBAND OPPORTUNITIES

Adoption of the NPRM would create a zero-sum “solution” for the problem of unserved and underserved areas. Rural carriers denied sufficient support to sustain existing provision of broadband service would have neither interest nor means toward expansion into adjacent or nearby unserved areas. Existing large providers have demonstrated their lack of interest in providing universal broadband availability through reliance on incentive regulation.

Other potential providers may claim willingness to make service commitments in exchange for immediate receipt of support, but the limited success of competitive basic service in high cost exchanges bodes ill for the long-term success of any such plans. There is a high likelihood that implementation of broadband by untested providers would result in substandard and ineffective performance necessitating protracted enforcement efforts, problematic attempts at recovery of support and setbacks in effective rural deployment of comparable broadband services. In areas

deprived of existing high quality and high capacity service, it is likely that a new provider would invest only to the extent necessary to offer marginal service without likelihood of future enhancements to meet increasing and reasonable customer expectations.

V. CONCLUSION

The rural telephone companies comprising these commenting organizations have made long term commitments toward the expansion of broadband availability to all Americans. Rural communities and rural economies face continuing challenges, and advanced communications services are crucial to any effort to arrest or reverse rural declines. Revision of existing regulatory policy appears necessary to support expansion into unserved and underserved areas. New policy, however must be crafted carefully and responsibly to avoid creation of new impediments to availability.

The NPRM proposes abrogation of established regulatory principles that have already enabled rural telephone companies to meet and exceed the limited broadband objectives now proposed for other areas yet unserved or underserved. This proposal ignores the major adverse economic impacts it would create, as well as the economic costs that would negate the net benefit of any effort to expand service at current total support levels.

In place of current successful policy the NPRM would impose presumed “market-based” solutions where no effective and sustainable underlying market exists.

The most likely result would be limited and insufficient improvement of availability in some rural areas, achieved only by sacrificing the transparency and assured sufficiency of policy that has produced superior results in other areas. New adverse consequences from adoption of the NPRM are not conjectural, but certain in a plan that would dig one hole for the purpose of filling another.

Rather than impose the certainty of loss of existing high quality services, together with resulting deterioration of rural economies, the Commission should substantially revise plans for broadband deployment. The responsible approach is to build on success, not to sacrifice proven performance and public resources for speculative benefits. The plan promulgated in the NPRM should be rejected.

Respectfully submitted,

Kendall S. Mikesell
Chairman, Kansas Rural Independent Telephone Companies

Mark Caplinger
Executive Manager, State Independent Telephone Association

Mark E. Gailey
Chairman, Rural Telecommunication Management Council

SENATE RESOLUTION No. 1832

A RESOLUTION urging modifications to the National Broadband Plan
for the benefit of rural residents of Kansas.

WHEREAS, Residents of this state living in rural areas deserve and expect the same high-quality, affordable communications services that are available to their urban neighbors; and

WHEREAS, Similar to businesses in urban areas, rural businesses, farmers and ranchers compete in the global marketplace and depend on affordable access to robust broadband services to market and sell their products around the world; and

WHEREAS, Children living in rural areas should have the same educational opportunities as their urban counterparts, and high-speed internet access is absolutely necessary to allow these students opportunities for advanced learning through distance education; and

WHEREAS, Residents living in rural areas face unique health care challenges because of the distances that must be traveled to seek basic and advanced medical care, and telemedicine delivered via broadband networks can improve the health of rural residents by reducing the time and travel needed for high-quality health care; and

WHEREAS, Many rural areas encounter significant challenges in pursuing and sustaining economic development plans that bring quality, higher-paying jobs to their communities, and insufficiently robust broadband speeds will further hamper the economic development needs of many rural communities; and

WHEREAS, The United States Department of Agriculture has rightfully placed significant importance on the need for broadband access in rural America to improve quality-of-life and economic development; and

WHEREAS, Communications providers that serve this state's rural areas have worked diligently to ensure that their consumers have access to affordable and reliable broadband services and have utilized the United States Department of Agriculture's Rural Utilities Service loan and grant programs for economic development; and

WHEREAS, Contrary to the progress rural communications providers have had in deploying broadband, the Federal Communications Commission is embarking on a National Broadband Plan that will negatively impact the ability of residents living in rural areas of this state to realize the true benefits of access to robust broadband speeds by limiting support to four megabits per second in rural, high-cost areas of the country, while calling for one hundred million urban homes to have access to broadband speeds at 100 megabits per second by 2020; and

WHEREAS, The National Broadband Plan runs counter to the federal universal service policy which ensures access to communications services at comparable rates regardless of the consumer's location: Now, therefore,

Be it resolved by the Senate of the State of Kansas: That we challenge the Federal Communications Commission to make substantive change to the National Broadband Plan so that the plan develops a universal service support mechanism that ensures accountability, promotes stability, provides efficient and effective incentives for broadband network deployment and operation and encourages broadband adoption by keeping broadband service affordable. The plan should also ensure high-quality service by linking funding to satisfying reasonable, but meaningful, carrier of last resort obligations. Consistent with the universal service principles in federal law, the plan should ensure that rural and urban consumers pay reasonably comparable rates for reasonably comparable services by providing adequate support in high-cost areas; and

Be it further resolved: That we urge the members of the Kansas Congressional Delegation to work with the Federal Communications Commission to ensure that commissioners understand the importance of robust broadband deployment to rural Kansas and how the current draft of the National Broadband Plan needs to be dramatically altered to ensure quality broadband service availability throughout this state; and

Be it further resolved: That the Secretary of the Senate be directed to provide an enrolled copy of this resolution to the commissioners of the Federal Communications Commission, the members of the Kansas Congressional Delegation and the Governor.

Senate Resolution No.1832 was sponsored by Senators Taddiken, Abrams, Apple, Bruce, Brungardt, Emler, Francisco, Haley, Hensley, Holland, Kelly, Kelsey, King, Kultala, Longbine, Love, Marshall, Masterson, McGinn, Merrick, Morris, Olson, Ostmeyer, Petersen, Pilcher-Cook, A. Schmidt, V. Schmidt, Schodorf, Steineger, Teichman and Umbarger.

I hereby certify that the above RESOLUTION originated in the SENATE, and was adopted by that body March 22, 2011.

Stephen R. Morris
President of the Senate

Pat Saville
Secretary of the Senate